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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 1170

J. R. McLEOD,

Petitioner,

vs.

CITY OF JACKSON

RESPONDENT'S BRIEF IN OPPOSITION

MARCELLUS GREEN,
W. E. MORSE,
GARNER W. GREEN,
Counsel for Respondent.

GREEN & GREEN,
Of Counsel.

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RESPONSE TO PETITION FOR CERTIORARI

I

Record Not Complete

The record herein printed omits the following relevant proceedings in Mississippi's Supreme Court.

(a) Certain questions propounded upon appeal in No. 35,803.

(b) The opinion on prior appeal, No. 35,803.

(c) Assignment of Errors in (1) 35,803 and (2) in 35,989. All are appended under certificate, together with a certificate from Mr. Justice Griffith, who delivered the opinion in

Mississippi's Supreme Court, that no Federal question was considered or decided and that the decision was limited to questions of local law, whereunder the rights of the respective parties were properly admeasurable.

II

Reply to McLeod's Petition for Certiorari, Utilizing Same Headings

1. *Summary Statement of Matter Involved*

(a) Disregarding for the moment that said by McLeod, we thus state for the Court's convenience the City's viewpoint.

Jackson, though the capital of Mississippi, is comparatively a small City, possessing a population of fewer than 100,000. Its charter is found in the General Laws, Mississippi Code of 1930, Sections 2626 to 2656, wherein under Section 2639, it is provided:

> "The council shall also have power, from time to time, to create, fill or to discontinue any and all offices and employments other than those created herein * * * to remove any officer or employee elected or appointed by the council, and to elect or appoint a successor; * * *"

Compare *Glover* v. *Columbus,* 197 Miss. 467, 19 So. 2d 756, whereunder, with or without cause, a policeman might be removed.

Under Chapter 208, Laws of Mississippi of 1944, page 465, McLeod (with other policemen) was inducted under Civil Service and his tenure was under Section 9: "during good behavior", but with right of removal in the Mayor and Commissioners (called appointing authority) when "* * * incompetency, inefficiency, or inattention of duty; dishonesty, intemperance, immoral conduct, insubordination, discourteous treatment of the public, or a fellow em-

ployee, *or any other act of omission, or commission tending to injure the public service.*" No officer can hold in Mississippi during "good behavior", Section 20, Constitution of 1890.

Beginning in January, 1944, secretly, steps were taken looking towards the organization of a local police union under American Federation of State, County and Municipal Employees, an affiliate of the American Federation of Labor. Progress was continued secretly with a charter mailed in early June, 1944. On June 16th, there was in progress a municipal campaign wherein Scott, the then Mayor, sought re-election. Hawkins and Taylor, the Commissioners, were not candidates. According to petitioner's evidence (transcripts 208 and 209), Bruton, the spokesman for the proposed union, met the Mayor and this conversation occurred:

> "A. He (the Mayor) asked me (Bruton) when it (the Union) was formed, and how many men had joined it, and he patted me on the shoulder and told me it was all right, but we couldn't afford to let it get out at this time. He said, 'I got everything being lined up in good shape. If it gets out, it is going to tear it all down and defeat me.' He said 'It will be dirty politics'. I told him there was no politics involved in it.
>
> • • • • • • •
>
> "A. He said he wanted us to keep it under cover and not let it get out until after the election, and then he would help us organize it.
>
> "By Mr. Green: We object to that as a declaration by the Mayor, if made, that was in the capacity as a candidate, and in no way binding upon the City.
>
> "By the Court: Overrule the objection.
>
> "By Mr. Burkett:
>
> "Q. That he would help you organize it if you kept it quiet until after the election?
>
> "A. Yes, sir.

"Q. Did you tell him you would do that?

"A. No, sir; I told him that the men had already voted for a committee to call on the chief of police that afternoon as soon as court was over, and request permission for them to meet in the court room for about fifteen minutes to set up a permanent organization.

"Q. Then what did he say?

"A. He said he couldn't do it. He said he couldn't afford for it to come out, he was not going to lose out. He said he was going to fight this if it cost him the election. He said he considered it a slap in his face and a stab in his back."

The Chief of Police, Holden, reported (transcripts 14 and 92):

"On yesterday afternoon, Friday, June 16, 1944, at about 4:30 o'clock, the following group called on me in my office: O. V. Jordan, a representative of I. B. E. W. local union of the Mississippi Power & Light, Frank Thompson for the Brick Masons local union; L. E. Pollock from the Painters and Decorators Local Union; George Cook from the Motion Picture Operators local union; George Cooper of the I. B. E. W.; B. R. Upton from the Carpenters Local Union; W. G. Hemphill from the Bus Drivers local Union and B. H. Bowers of the Bus Drivers Union. In addition to these, the following were present: J. D. Lowery, J. R. McLeod, and C. I. Bruton, of the Jackson Police Department.

"This committee called on me for the purpose of announcing the formation of a local union for the Jackson Police Department, which is known as Local No. 713 of the American Federation of State, County and Municipal Employees; * * *."

Immediately upon this becoming known, a group of businessmen assembled at the Chamber of Commerce rooms and passed this Resolution (transcripts 18 and 114):

"Moved that the Chairman appoint a committee of five to call on the Mayor and Commissioners and in-

> form them that in the opinion of a representative group of business men the allegiance of police employees should not be divided and that the Mayor and Commissioners shall take immediate steps to maintain a police department which shall be wholly directed by elected city officials."

With the issue thus made, McLeod was removed and as shown by the record, his claim was that the removal was solely for political purposes (transcripts 180 and 181), the references to the Union issue being merely a smoke screen.

McLeod then appealed to the Civil Service Commission, where, at this hearing, much evidence was taken (transcripts 65 and 107), whereafter the Commission sustained the appointing power in the removal. Thereupon, McLeod assumed to appeal to the Circuit Court alleging in his petition therefor (transcript 6) that his right was solely in virtue of Section 10, Chapter 208, Laws of 1944, providing:

> "* * * such hearing shall be confined to the determination of whether the judgment or order of removal, discharge, demotion or suspension made by the commission, was or was not made in good faith for cause, and *no appeal to such court shall be taken except upon such ground or grounds.*"

Whereafter, a hearing was had in the Circuit Court thereunder, in which no jury was empaneled and at which the Circuit Court on motion of the city affirmed. Thereupon, McLeod appealed to the Mississippi Supreme Court, wherein the opinion was as shown in Appendix A, and reversal had for a jury trial. Upon remand, McLeod thoroughly misconceived the import of the reversal and induced the Circuit Judge, contrary to his initial opinion, to assume to try not that authorized by the Statute quoted *supra,* but solely that done by the Mayor and Commissioners.

Over the City's objection, McLeod excluded (a) all proceedings had by the Civil Service Commission; and (b) all evidence taken before that body; and after much evidence had, the cause submitted to the jury on an issue made substantially by McLeod's instruction, thus:

> "The Court instructs the jury for the defendant, J. R. McLeod, that under the law of the State of Mississippi, the defendant had an employment with the City of Jackson, which could not be terminated by said City, except in good faith and for cause, and unless the City of Jackson has established by a preponderance of the proof in this case, that the employment of the defendant was terminated in good faith and for cause, then you should find for the defendant."

Thereupon, the jury returned a verdict for McLeod and the basis thereof was alleged wrongful political action by Scott, who is claimed by McLeod to have been motivated by a desire for his political preferment rather than for the public benefit, whereupon motion *non obstante* was filed by the City, which, being overruled, judgment for McLeod was entered thus:

> "It is therefore ordered and adjudged that the defendant, J. R. McLeod, be, and he is hereby reinstated in, and restored to his position as a member of the Police Department of the City of Jackson, Mississippi, with all the immunities, rights, privileges and emoluments appurtenant thereto, as if all the orders, ordinances, resolutions of the City of Jackson, and the judgment of the Civil Service Commission of said City with respect to the dismissal and discharge of the defendant, had not been made, adopted and entered." (Transcripts 234 and 235.)

Thereupon, the City appealed and under errors assigned, involving no Constitutional question whatever, in the view taken by the Court, the Supreme Court reversed and dis-

missed. The opinion appears at Transcript 235, concurring opinion by Chief Justice Smith, a dissenting opinion by Mr. Justice McGehee, a statement by Mr. Justice Roberds.

From that thus done, certiorari is here sought. (b) Recurring now to McLeod's claim under this heading made, therefrom, with deference, we dissent because the causa causans of McLeod's dismissal was not "for *sole reason* that petitioner had expressed an intention of becoming a member of American Federation of State, County and Municipal Employees," petition page 2.

1. Walter A. Scott, then Mayor and candidate for re-election, on July 2, 1944, was confronted by the proposed unionization of Jackson's Police Force and when so placed on the spot politically, thus spoke as hereinbefore declared.

2. When appealing to the Circuit Court as permitted by Section 10, Laws of 1944, Appendix B, McLeod voluntarily stated judicially (transcript 9):

> "• • • the proof shows that the respondent was discharged because he refused to support actively the candidacy of Walter A. Scott for Mayor of the City of Jackson."

And similar declarations occur passim.

(c) As to the alleged anomaly of a Labor Union foregoing the right to strike, collective bargaining (*Thomas* v. *Collins*, 323 U. S. 516, 89 L. Ed. 340), and other fundamental rights sacred in the eyes of unionism.

These factors were not integrated affirmatively before the Mayor and Commissioners.

At petitioner's request, the Circuit Court deleted all proceedings on appeal before the Civil Service Commission.

The sole instruction asked by petitioner as to his rights was as above quoted.

The City was refused, specifically:

> "Instruction C. The Court instructs the jury as a matter of law over which the jury have no power to pass that the City of Jackson, when acting by its Mayor and Commissioners might lawfully prescribe and provide that no person being a member of this union affiliated with the American Federation of Labor could longer be a policeman."

And, likewise Instructions B through Q of similar import were refused, whereasto, if judicial notice may be taken, we refer to Appendix C, the opinion of the Police Commissioners of St. Louis, Missouri, quoting therefrom:

> "History and common sense teach us that this self denial may be very temporary and fugitive. Particularly is this true when we consider that the right to strike is of the very essence and strength of the union movement. It is a right for which the unions have fought and sought recognition from the public and the Courts. The great union organizations and their leaders have all taken the position that they will not permit any diminution of that right."

And this very Federation permitted at Philadelphia a strike involving fundamental health conditions against organized government (transcript 193).

(d) As to the claim of (1) seniority rights and (2) participation in the Disability and Relief Fund. Petitioner received all whereto he was thereunder entitled so that as at the date of discharge, he had therein no property rights whatsoever, but had he, the possession thereof did not entitled him to continue as policeman, but only to the restitution admeasured by his rights therein, which were in no way covered under the special statutory proceeding wherethrough this Court obtains jurisdiction. Furthermore, these rights, if existent, were not so shown in the

transcript as to merit consideration. The Circuit Judge excluded on the ground of irrelevancy (transcript 213). We admit McLeod claimed Constitutional rights, but did not do, with deference, that requisite to present them here in this aspect and consequently, make no further reference to alleged property deprivation, confining ourselves to the rights claimed, alleged to be more fundamental.

(e) Petitioner claims Federal questions raised, petition pages 4 and 5, before (1) Civil Service Commission, (2) Hinds County Circuit Court, (3) Supreme Court of Mississippi, First Appeal, #35,803, (4) Re-trial, Circuit Court of Hinds County, and (5) Second Appeal, Cause #35,989.

With deference, we deny herein any Federal questions properly raised or reviewable, even though as to certiorari, the jurisdiction is broad, in this that (1) such questions were "ignored", petition pages 5 and 6, and (2) only local questions determined.

III

Statement as to Jurisdiction and Questions Presented (Claimed by Petitioner to Be Presented)

Herein, McLeod claims (1) "That the sole reason for discharge was that the petitioner has signified an intention to become a member of a particular labor organization • • • (thus) depriving petitioner of the right of assemblage, speech and petition guaranteed under the Bill of Rights and protected against infringement by the State under the Fourteenth Amendment", and does such action "of the City of Jackson" deprive McLeod of rights under the Fourteenth Amendment?

Not only, with deference, are these statements inaccurate, but they fundamentally misconceive that judicially at issue and determined.

(a) Petitioner concedes, petition page 6, "majori opinion of the State Supreme Court ignored the Feder ques-tions brought before it". We affirm this was proper ecause there were by petitioner's own conduct presented solely local questions for decision, adequately admeasuri g McLeod's rights and precluding judicial relief under Mississippi Law. Wherein consider (1) by Section 2639, Code of 1930, Section 3803, Code of 1942, the City might have removed McLeod at pleasure, with or without cause. *Glover* v. *Columbus,* 197 Miss. 467, 19 So. (2d) 756; *Kendall* v. *City of Canton,* 53 Miss. 526; then by Chapter 208, Laws of 1944, McLeod being inducted into Civil Service, had those rights under Mississippi's Statute as determined by Mississippi's Court, holding substantially that the Civil Service Commmission might define administratively "cause" and having thus done, thereasto there was no judicial question.

McQuillan, Municipal Corporations, Vol. 2, Rev., 2nd Ed., 428, 437, 499, it is said:

> "* * * the exercise of the power of removal from office is administrative, as distinguished from judicial. * * *
>
> "Where power to remove for cause is conferred but the law does not define 'cause' it is left for the agency vested with the power of removal to determine what is sufficient cause. * * *".

Compare Dillon, Municipal Corporations, Vol. 1, 4th Ed., at page 692; *State ex Rel.* v. *City of Seattle,* 159 Wash. 392, 293 Pac. 459; *City of Elkhart* v. *Minser,* 211 Ind. 20, 5 N. E. (2d) 501. In *State* v. *Boyington,* 110 Wash. 622, 188 Pac. 777, 779, 780, the Court said:

> "It is not for the courts to say what cause is or is not sufficient to support a dismissal by the civil service commission unless possibly the cause assigned be so

> frivolous that all minds must necessarily agree that it is not a legitimate cause.
>
> "Stated generally we think it may safely be said, that, the subject of inquiry by the court touching such cases is not whether they have been decided rightly or wrongly by the special tribunal created by the law to decide them, but whether or not the city authorities, including the special tribunal, have proceeded in the manner prescribed by law, in this case the city charter."

However, so far as we have been able to ascertain, assuming the dismissal to have been solely for Union participation, the right to exclude existed on the part of the City. *N. L. R. B.* v. *Jones & Laughlin Steel Corp.*, 14 Law Week 2627. In *Doyle* v. *Kammeraad*, 17 N. W. (2d) 165, 310 Mich. 233, the Court said:

> "A police force is practically a military force, and something more than an ordinary executive branch of city government, and the members of the force must surrender individual powers and freedom of action in favor of undivided allegiance to their public duty."

As well might the judiciary see fit to revise the decision of a military tribunal, adjudging a "union" of soldiers to be contrary to military discipline and public welfare. Simply the judicial power does not extend thereto. However, note approval by Mississippi Court herein of *Fraternal Order of Police* v. *Lansing Board of Commissioners*, 306 Mich. 68, 10 N. W. (2d) 312:

> "Those who serve the public, either as makers of the law, interpreters of the law, or those who enforce the law, must necessarily surrender, while acting in such capacity, some of their presumed private rights. As stated by Mr. Justice Sharpe 'Nor can it be denied that when a person is appointed and becomes a member of the police department he subjects himself to the reasonable rules, regulations adopted by the board'.

"We agree with the trial judge that the resolution adopted by the Board was reasonable and that it cannot be said that such action is not within the scope of authority granted by the charter of the City of Lansing. Neither the plaintiff nor the individual concerned are deprived of any constitutional rights."

Mississippi Court also approves:

(a) *Hutchinson* v. *Magee,* 278 Pa. 119, 122 Atl. 234;
(b) *Carter* v. *Thompson,* 164 Va. 312, 180 S. E. 410;
(c) *McNatt* v. *Lawther,* Tex. Civ. App., 223 S. W. 503;
(d) *San Antonio, etc., Local Union* v. *Bell,* Tex. Civ. App., 223 S. W. 506;
(e) *Brownell* v. *Russell,* 76 Vt. 326, 57 A. 103;
(f) *McAuliffe* v. *City of New Bedford,* 155 Mass. 216, 29 N. E. 517.

We find no decision holding that a City may not administratively exclude from its police force those obligated by oath to do that which may be inconsistent with their undivided allegiance.

By Section 10, McLeod, under Civil Service, was removable. The Civil Service Commission having considered *McLeod's* case, ordered his removal, yet all proceedings thereasto before said Commission were deleted from the record on McLeod's motion. Whereupon the Supreme Court of Mississippi sustained as appropriate the removal when McLeod, ignoring wilfully the right appeal and the manner wherein it might be had, assumed to bring before Mississippi's Court that whereasto it had no jurisdiction and wherefor dismissal was vouchsafed.

2. Mississippi's Court construed Mississippi's Civil Service Act, held that the Civil Service Commission administratively properly removed McLeod, having thereasto under said Statute the requisite power therefor properly administratively exercised.

3. On the judicial review vouchsafed by Section 10 in the Circuit Court, the sole issue there allowed "was or was not made in good faith for cause and no appeal to such Court shall be taken except upon such ground or grounds." Appeals in Mississippi are purely statutory. *Keaton* v. *State*, — Miss. —, 19 So. (2d) 477. Herein, on appeal to the Circuit Court, McLeod, over the protest of the City, confined the judicial inquiry solely to whether or not he was properly removed by the Mayor and Commissioners, disregarding entirely that done before the Civil Service Commission (whose proceedings were stricken on McLeod's motion) and the sole issue submitted to the jury by McLeod was under his Instruction No. 2, quoted *supra*.

McLeod's counsel, erroneously conceiving as to what the first opinion decided, got the Circuit Judge to hold (transcript 46):

> "Gentlemen, this Court will hold that the issue to be tried is whether or not the City Commission, that is, the Mayor and the two Commissioners, acted in good faith and that what the Civil Service Commission did or did not do, has no place in the trial of this case whatever. * * *".

So, when McLeod voluntarily assumed to have tried that which Mississippi's Law did not allow to be tried, appropriate dismissal was that requisite for conscious transgression of the express provision of this Statute.

4. McLeod submitted to the jury the sole issue above set out (transcripts 46, 222, 223 and 224). He did not request a directed verdict at the conclusion of his cause (transcripts 140 and 222), but having convinced the Circuit Judge that the sole issue was rightfulness of discharge by the Mayor and Commissioners, *vel non*, McLeod succeeded in having the Circuit Court judicially deny to the City (1) a directed verdict, (transcript 217) and (2) the following instructions,

whereunder the City sought to have integrated into this cause the view that the City might discharge McLeod by reason of his connection with the Labor Union, but these instructions and each of them from B to Q were refused in their entirety and we quote the most outstanding of them:

Instruction "C"—quoted *supra.*

Instruction "G":

> "The Court instructs the jury for the City that if you believe from the evidence in this cause that the Civil Service Commission, composed of Messrs. Ricks, Wright and Pullen, acted in good faith and for cause in entering its judgment against the defendant, McLeod, then it is your duty to bring in a verdict for the plaintiff even though you believe in your own mind that joining a police union would not injure the public service to be rendered by a policeman."

Instruction "H":

> "The Court instructs the jury for the City that if you believe from the evidence in this cause that the Civil Service Commission, consisting of Messrs. Ricks, Wright and Pullen, had before it evidence upon which it could find that the act of joining a police union was an act tending to injure the public service and if you believe that this commission did so find and in so doing acted in good faith, then it is your duty to find for the plaintiff even though you personally do not believe the same thing and would not have acted the same way."

Instruction "I":

> "The Court instructs the jury for the City that under the law it is the duty of the Civil Service Commission to determine whether the joining of a union by a policeman is an act tending to injure the public service and that if you believe from the evidence in this cause that the Civil Service Commission in finding that such act was an act tending to injure the public service acted in

good faith under the evidence submitted to them, then it is your duty to find for the plaintiff even though your personal belief may be to the contrary."

Instruction "M":

"The Court instructs the jury for the City that if you believe from the evidence in this cause that the City Commission had before it evidence upon which it could find that the act of joining a police union was an act tending to injure the *piblice* service and if you believe that this commission did so find and in so doing acted in good faith, then it is your duty to find for the plaintiff even though you personally do not believe the same thing and would not have acted the same way."

So herein, McLeod excluded affirmatively from the jury's consideration that which he now seeks to have here presented and excluded the City's instructions, declaring the right.

5. Furthermore, as to whether the conduct wherethrough these policemen were discharged was done by Scott individually and for personal motives or on behalf of the City was likewise an issue. Compare Instruction No. 3 (transcript 214).

6. As to the exact status of McLeod, whether member of a union or not, is quite uncertain and before both the State Circuit Court and the Mississippi Supreme Court, as stated in brief filed with this petitioner, McLeod conceded

That if McLeod had not been under Civil Service and had applied to be employed as a policeman, the City might have exacted as a condition of employment that he forego union participation.

7. Under Mississippi's Constitution, Sections 1 and 2, creating separate judicial department, that done by the Mayor and Commissioners and the Civil Service Commis-

sion was not subject to judicial review, being an administrative act.

8. McLeod voluntarily deleted from the record all proceedings before the Civil Service Commission, which alone had a right under Mississippi Statutes to review and having taken from the record voluntarily (but under a misconception) that whereasto the review might be had, may not raise a Federal question.

9. McLeod does not bring before this Court the whole case. Thus the issue made and on which McLeod succeeded before the jury was that his removal by Scott was political. That done by the Civil Service Commission constituted the last act of the City and the sole act reviewable by the Circuit Court under Section 10. *City of Jackson* v. *McLeod*, — Miss. —, 24 So. (2d) 319.

10. But if we be in error as to these grounds being exclusively local, then at best they were both local and Federal, (Transcript 6) and those local were the ones whereasto the verdict, with deference, was in McLeod's favor, but if there be Federal questions which, with deference, there are not, then as shown in the argument, those questions were judicially decided properly.

(b) Obviously, McLeod was not denied any right under the first Amendment, because freedom to assemble and speak does not connote the right thereby to compel the party having the municipal authority to involuntarily adopt that demanded. In short, the majority of the people having elected the local officials, had the right to have those officials exercise their discretion for the general welfare. The record wholly fails to show at any time or place that McLeod and his associates did not have the fullest right to assemble when and where they pleased and to say what they pleased.

No denial thereof is hinted at in this record. That solely complained about is that the Mayor and Commissioners did not do that which McLeod demanded. The reason for McLeod's discharge was his failure to cooperate with the so-called Scott machine.

(c) We affirm, if the Federal questions were in this record—and they are not—sought to be raised by petitioner, then they were properly decided, arising, we aver, judicially for the first time in this Court and not having been at any time passed upon by Mississippi's Supreme Court, though it is true that Mr. Justice McGehee may have adverted to them in his dissenting opinion. It is to be noted that there is a fundamental difference between reversing a judgment and affirming a judgment. When the judgment is reversed, the Court passes on only those issues adverted to. C. J. S. 1498, Section 1963.

(d) In fact, we deny that there are any Federal questions appropriately raised by the record in this cause.

(e) We do not acquiesce in petitioner's statement as to Mississippi Supreme Court practice. The City assigned certain errors, those errors being briefed, limited the Court's right to review under Section 146 of the Constitution. Constitutional questions are not decided by Mississippi's Court unless essential and no such condition existed. True, McLeod did refer to certain alleged Federal rights, but he could not catechize the Court into a decision as shown by the opinion of the Chief Justice, and certificate from Justice Griffith, who delivered the majority opinion. This practice as to certificate may presently be obsolete, but in years that were past, such certificates under certain circumstances had effect here, and in this case, we bring the certificate to definitely show that the Court did not intend to, nor did it decide any Federal question.

IV

Reasons Relied On for Allowance of Writ

With deference, no reasons exist why this Writ should be allowed, especially as the Supreme Court of Mississippi has not passed on this question directly or indirectly or defined what Jackson might or might not do and until it so does, this Court will not entertain for construction fundamental Constitutional rights. *American Federation of Labor* v. *Watson,* — U. S. —, 90 L. Ed. 715.

We, with deference, categorically deny the City of Jackson, as shown in this record, "has attempted to require the surrender of fundamental rights as a condition of being continued in employment by such a municipality." (Transcripts 46, 222, 223 and 224). But on the contrary, the sole issue under the instruction to the Circuit Court was as to that done by Scott, the Mayor, and the Commissioners, which was as to that allowed by Mississippi's Law on appeal, wholly irrelevant and immaterial and having so been, therefor the appeal was dismissed.

The Constitutional questions were not made the basis of the trial in the Circuit Court and that trial was that whereasto that Court had no jurisdiction and having none, the Supreme Court had none and this Court can have none (*Welch* v. *Bryant,* 157 Miss. 559, 128 So. 734), its jurisdiction being conditioned upon that of the Circuit Court and the local Supreme Court. All cases cited in this Section are distinguished under the argument. There was, however, no attempt to deny the right of "free assemblage, speech and petition" and, as above stated, there were no property rights, petitioner affirmatively having shown none to exist.

Therefore, there having been no decision of Federal rights herein, there having been no definition of the inter-

play between Federal and State rights, and that solely decided having been an immaterial issue improperly raised in the Circuit Court without lawful authority by McLeod, this Court should not, with deference, go a-fishing in a record wherein it will not find judicially determined that whereover it may exercise its supervisory power.

Respectfully submitted,

MARCELLUS GREEN,
W. E. MORSE,
GARNER W. GREEN,
Jackson, Miss.,
Counsel for Respondent.

GREEN AND GREEN,
801 Standard Life Building,
Jackson, Mississippi,
Of Counsel.

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